HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 660 of 2007

Between:

Karanam Satyanarayana

… Appellant

And

The Managing Director, Farmers Service Co op. Society,
Gaddipally V& P, Garedepally Mandal,
Nalgonda District & others

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri T.C. Krishnan

September 24, 2007

Per G.S. SINGHVI, CJ

This is an appeal for setting aside order dated 13.03.2007 passed by the learned Single Judge in Writ Petition No.999 of 2006, whereby he declined to interfere with the action taken by Farmers Service Cooperative Society (for short, 'the society') to transfer land measuring Ac.16.04 cents comprised in Survey Nos.96, 98 and 99 situated at Dasaigudem Village, Kesaram Revenue Village, Suryapet Mandal, Nalgonda District to respondent Nos.5 and 6.

In the writ petition filed by him, the appellant questioned the transfer of land by alleging that even though its present market value is almost Rs.5 Crores, respondent No.4 illegally entered into an agreement with respondent Nos.5 and 6 for sale thereof at a

throwaway price of Rs.5,10,000/-. He also alleged that without holding meeting of the society so as to enable its members numbering 3000 to take appropriate decision in the matter of transfer of land, respondent No.4 clandestinely entered into an agreement with respondent Nos.5 and 6.

In the counter affidavit filed by respondent Nos.1 to 4, it was averred that as on 20-10-2005, there were only 103 members on the rolls of the society and that the decision to transfer the land was taken by the managing committee of the society at its meeting held on 27.10.2005 and the said decision was unanimously approved in the General Body meeting held on 11.11.2005. It was further averred that as per Basic Value Register, the cost of the land was Rs.30,03,475/-, whereas it was sold to respondent Nos.5 and 6 for Rs.36,00,000/-.

Respondent No.7, who got himself impleaded as party to the writ petition, filed reply stating therein that the disputed land was subject matter of litigation pending in the Supreme Court.

The learned Single Judge did not go into the issue of locus standi of the petitioner and dismissed the writ petition by observing that the petitioner and respondent No.7 have failed to show that the transfer of the land is contrary to the provisions of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act'). The learned Single Judge also accepted the plea of respondent Nos.1 and 2 that due to its location the land could not fetch more price and that sale thereof had become imperative to clear the society's liability towards the State Bank of Hyderabad. As regards the plea set up by the petitioner and respondent No.7 that the auction of the land could fetch more price, the learned Single Judge observed:

> "Inasmuch as the effort of the petitioner was to ensure that the property fetches maximum amount for the society, this court

> verified from the petitioner and respondent No.7, as to whether they can procure any purchasers of the property, for a higher amount. It was pointed out that in case the 7th respondent is so particular about the matter, he must deposit a sum of Rs.50,000/-, to prove his bonafides, and the petitioner also can arrange a party, who can comply with this condition. Both of them expressed their inability, to comply with this condition. It may be true that if the property is put to auction now, it may fetch some more amount, in view of the recent escalation. But the matter needs to be examined, as the situation emerged when the property was sold. Nothing prevented the 7th respondent, to offer the same amount, as did the respondents 5 and 6. Compared to the consideration of Rs.5,10,000/-, offered by respondent No.7 in the year 1992, a sum of Rs.36,00,000/- paid by respondents 5 and 6, is fairly higher, and cannot be said to be inadequate……"

We have heard Shri T.C. Krishnan, learned counsel for the appellant and scrutinised the record.

In our opinion, the writ petition filed by the appellant ought to have been dismissed by the learned Single Judge on the ground of non-impleadment of the necessary party and also on the ground that the appellant has failed to avail the statutory remedy available to him under Section 61 of the Act.

A careful reading of the writ petition shows that the appellant had impleaded the Managing Director and Shri Ganta Gopal Reddy, Chairman of the society (respondent Nos.1 and 4 herein), but did not implead the society which has a juridical personality and which can sue and be sued in its own name as party to the writ petition. Admittedly, the disputed transaction was between the society on the one hand and respondent Nos.5 and 6 on the other. The agreements etc. must have been signed by respondent No.4 and the Managing Director on behalf of the society and not in their individual capacity.

Therefore, without insisting on impleadment of the society as party to the writ petition, the learned Single Judge should not have adverted to and adjudicated the issue raised by the petitioner on merits.

We are further of the view that the dispute relating to transfer of the assets of the society clearly falls within the ambit of Section 61 of the Act which begins with non-obstante clause and lays down that any dispute touching the constitution, management or the business of a society other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee shall be referred to a specified authority. The remedy available to the petitioner under that section is an effective alternative remedy and there is no extraordinary reason which would warrant deviation from the settled rule that the High Court will not entertain writ petition under Article 226 of the Constitution of India, if an effective remedy is available.

For the reasons stated above, the appeal is dismissed leaving the appellant free to avail remedy in terms of Section 61 of the Act.

G.S. SINGHVI, C.J.

C.V. NAGARJUNA REDDY, J.

September 24, 2007

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